TROPILAND SDN BHD

v.

MAJLIS PERBANDARAN PULAU PINANG

COURT OF APPEAL, KUALA LUMPUR
NH CHAN JCA
ABDUL MALEK AHMAD JCA
AHMAD FAIRUZ JCA
[CIVIL APPEAL NO: P-02-691-95]
5 AUGUST 1998

LOCAL GOVERNMENT: *Rates - Arrears of assessment - Valuation list - Amendments to valuation list - Whether amendments could be done after expiry of term of valuation list - Local Government Act 1974, s. 144*

The appellant/defendant was the owner of a multi-story car park on the premises. It received a notice dated 1 June 1990 purporting to assess the rate for the car park backdated to 2 April 1986 on which date the appellant occupied the premises. Although the assessment was in 1990, two valuation lists were involved – the first commencing 1 January 1982 to 31 December 1986 and the second commencing 1 January 1987 to 31 December 1991.

There was a proposal in the notice to amend the valuation list for the years 1986 to 1990. As the appellant did not make payment, the respondent filed an originating summons dated 9 June 1993 for an order that the premises be attached and sold under the Local Government Act 1976 ('the LGA') to pay off the arrears amounting to RM629,741.94. The High Court reversed the decision of the senior assistant registrar in refusing to order the attachment and sale under s. 151(1) of the LGA. The appellant appealed. The issue for consideration was whether an amendment to a valuation list could take place after the expiry of the five-year term of the valuation list in question.

Held:
Per Abdul Malek Ahmad JCA

[1] Based on s. 137(2) and 144 of the LGA, the valuation list together with the amendments made shall remain in force until it was superseded by a new valuation list. Once superseded, the previous valuation list was no longer in force. Therefore, when a valuation list is amended, it must certainly be the valuation list that is in force and not the superseded one. An amendment therefore cannot be made to an outdated valuation list.

*[**Bahasa Malaysia** Translation Of Headnotes]*

Perayu/defendan merupakan tuanpunya tempat letak kereta bertingkat di sebuah bangunan. Ia telah menerima notis bertarikh 1 Jun 1990 yang bertujuan untuk mentaksirkan kadar tempat letak kereta yang ditarikhbelakangkan kepada 2 April 1986, tarikh bilamana perayu telah menduduki bangunan tersebut. Haruslah diperhatikan bahawa walaupun pentaksiran tersebut adalah dalam tahun 1990, terdapat dua senarai pentaksiran yang terlibat – yang pertama bermula dari 1 Januari 1982 hingga ke 31 Disember 1986 dan yang keduanya bermula dari 1 Januari 1987 hingga ke 31 Disember 1991.

Terdapat cadangan dalam notis untuk meminda senarai pentaksiran untuk tahun-tahun 1986 hingga ke 1990. Oleh kerana perayu telah tidak membuat pembayaran, responden telah memfailkan saman pemula bertarikh 9 Jun 1993 untuk suatu perintah supaya bangunan tersebut ditahan dan dijual di bawah Akta Kerajaan Tempatan 1976 ('AKT') untuk membayar tunggakkan yang berjumlah RM629,741.94. Mahkamah Tinggi telah mengubah keputusan penolong kanan pendaftar yang enggan memerintahkan penahanan dan jualan di bawah s. 15(1) AKT. Perayu telah merayu. Isu untuk dipertimbangkan adalah sama ada suatu pindaan kepada senarai pentaksiran dapat dilakukan setelah tamatnya tempoh masa lima tahun senarai pentaksiran tersebut.

Diputuskan:
Oleh Abdul Malek Ahmad HMR

[1] Berdasarkan ss. 137(2) dan 144 AKT, senarai pentaksiran serta pindaan yang dibuat akan tetap berkuatkuasa sehingga ianya diatasi oleh senarai pentaksiran yang baru. Sebaik sahaja ianya diatasi, senarai pentaksiran yang kini berkuatkuasa adalah senarai yang dipinda dan bukannya senarai yang diatasi. Maka suatu pindaan tidak boleh dibuat kepada suatu senarai pentaksiran yang di luar masa.

Cases referred to:

Cathay Finance Co Ltd v. Municipal Councillors of Georgetown, Penang [1957] 3 MC ACJ 105 ***(dist)***

Majlis Perbandaran Pulau Pinang v. Eng Wan (M) Sdn Bhd [High Court, Pulau Pinang; OS No: 24-334-1994] ***(refd)***

Penang Yellow Bus Co v. Rural District Council [1961] 27 MLJ 291 ***(refd)***

Rodwell v. Gwynne Trusts Ltd [1970] RA 15 ***(dist)***

Semantan Estate (1952) Ltd v. Collector of Land Revenue [1960] 26 MLJ 300 ***(refd)***

Yee Seng Rubber Co Sdn Bhd v. The Commissioner of the Federal Capital of Kuala Lumpur [1972] 2 MLJ 21 ***(refd)***

Legislation referred to:
Land Acquisition Enactment (Cap 140), s. 22
Local Government Act 1976, ss. 137, 142, 144, 145, 148, 151, 154
Municipal Ordinance, s. 68(3)
Town Boards Enactment (Cap 137), s. 44(i)
Rent Act 1965 [UK], s. 17

For the appellant - Lakhbir Singh Chahl (Jagjeet Kaur with him); M/s Lakhbir Singh Chahl & Co
For the respondent - Dr Cyrus Das (Gerald Samuel with him); M/s Presgrave & Matthews

[Appeal from High Court, Pulau Pinang; Originating Summons No: 24-477-93]

Reported by Mariette Peters-Goh

JUDGMENT

Abdul Malek Ahmad JCA:

The originating summons filed by the plaintiff, the respondent before us, dated 9 June 1993 is for an order that the premises at No. 1 Lebuh Tek Soon, 10000 Penang, be attached and sold under s. 151 of the Local Government Act 1976 (hereinafter "the Act") to pay off the arrears amounting to RM629,741.94 together with interest at six per cent per annum from the notice dated 27 April 1993 until realisation.

Consequential applications were for an order that the date fixed for the sale should not be less than one month from the date of the order applied for, that the reserve price and other directions as regards the sale are to be fixed by the senior assistant registrar of the High Court in Penang, that there must be vacant possession of the premises within seven days of the sale, for other directions the senior assistant registrar deem fit and appropriate, for costs to be taxed and for the relevant authorities to register the name of the purchaser of the premises.

The appellant, the defendant in the court below, is the owner of the multistoreyed car park on the premises. They had received a notice dated 1 June 1990 purporting to assess the rate for the car park backdated to 2 April 1986, on which date the appellant occupied the premises. Although the car park commenced operations in April 1986, the certificate of fitness was issued only in October 1986.

The supporting affidavit of the respondent for the originating summons states that the arrears of RM629,741.94 is made up of the following:

arrears as at 9th April 1992	460,734.44	
miscellaneous debts as at 9th April 1992	49,016.50	
assessment for second half of 1992	49,016.50	
payment on notice imposed on 1st September 1992	980.00	
payment on warrant imposed on 10th October 1992	9,999.00	569,746.44
assessment for first half of 1993	49,016.50	
payment on notice imposed on 1st March 1993	980.00	
payment on warrant imposed on 8th April 1993	9,999.00	59,995.50
		RM 629,741.94

The originating summons was dismissed by the learned senior assistant registrar on 12 April 1994 and the appeal was filed on the next day to the judge in chambers. The learned High Court judge allowed the appeal and granted the order in terms on 18 October 1995.

After hearing the parties on 2 September 1997, we were not happy with the issue of the validity of one of the two valuation lists referred to especially when the learned High Court judge had brushed aside this point in the appeal before him. We requested both learned counsel to file in further written submissions before the next hearing on 12 November 1997.

Although the premises had been occupied since April 1986, the respondent never assessed the rates until 1 June 1990 when their valuation department issued the notice with the heading "Proposed Changes To the Valuation Lists" where it is stated that they were proposing the changes to the 1986 to 1990 valuation list with effect from 12 July 1990, on the grounds that the rates for the premises had never been rated before, at 25 per cent for 1986 and 11½ per cent for 1987 to 1990.

By letter dated 12 June 1990, the appellant made their objection on the grounds that they only commenced operations of the car park in November 1986 after getting the partial certificate of fitness for occupation on 18 October 1986 to use only two floors of the car park with one hundred and twenty bays. With only twenty per cent of it being used, they had suffered great losses.

The full certificate of fitness for occupation was only obtained on 28 April 1987. For the years 1986 to 1988, economic recession had set in resulting in further losses. With only 25 per cent of the car park being occupied, they had accordingly appealed for a reduction.

All these facts were disputed by the valuation department of the respondent in their reply dated 11 September 1990 when they gave the appellant two weeks to state in writing whether they wanted their objection to be heard by the assessment appeal committee failing which the rates as proposed by them in their earlier notice would be approved by the respondent.

By letter dated 20 September 1990, the appellant stated that they wanted their objection to be heard by the assessment appeal committee. The said committee met on 26 August 1991 to hear the objection but by letter dated 8 October 1991 they wrote to the appellant to say that they had decided that the rates should be RM87,300 for the period commencing on 2 April 1986 to 31 October 1986, RM362,800 for the period commencing on 1 November 1986 to 31 December 1986, RM629,900 for the period commencing on 1 January 1987 to 27 April 1987 and RM754,100 from 28 April 1987, which rates had been approved by the respondent on 26 September 1991.

The last paragraph of that letter also states that whoever is dissatisfied with the decision of the respondent may file an appeal to the High Court by way of originating motion within fourteen days from the date of receipt of the letter but all rates due must be paid at the time of the appeal by virtue of s. 145 of the Act.

The appellant did not file any appeal but at the same time they did not make any payment. This resulted in the originating summons filed on 9 June 1993.

Before the learned High Court judge, the appellant had raised the point of the validity of retrospective rating. The assessment was in 1990 but involved two valuation lists, the first commencing on 1 January 1982 to 31 December 1986 and the second commencing on 1 January 1987 to 31 December 1991.

The quick reply from learned counsel for the respondent was that the appellant were estopped from raising this issue as it had been decided by the assessment appeal committee and the appellant did not appeal against that decision. They could have appealed to the High Court after paying the rates. The learned High Court judge was of the view that the appellant were taking the easy course by not appealing to the High Court then but raising the point now without having to pay the rates first. This, he added, was a mockery of the proviso to sub-s. (1) of s. 145 of the Act. As such, he refused to consider the point.

The respondent also insisted before the learned High Court judge that the appellant cannot oppose the originating motion in these circumstances because when the Form H notice was pasted on the premises, the attachment had already taken place. In the event, the appellant could only make use of s. 154 of the Act to stay proceedings. Section 154 of the Act reads:

> 154. (1) If any person whose property has been attached under the provisions of this Part disputes the propriety of the attachment he may apply to the High Court, in the case of the attachment of a holding, or the Magistrate's Court in the case of the attachment of movable property, for an order to stay the proceedings, and such Court after making such enquiry as may be necessary shall make such order on the premises as may be just.
>
> (2) No application shall be entertained by any Court unless the applicant has deposited with the local authority the amount of the arrear with interest and costs.

Incidentally, the same High Court judge had already decided in *Majlis Perbandaran Pulau Pinang v. Eng Wan (M) Sdn. Bhd.* (Penang High Court Originating Summons 24-334-1994) that an attachment cannot be effective by mere pasting of Form H on the relevant premises. An order from the senior assistant registrar, he ruled, was necessary.

To say that the appellant cannot oppose the originating summons, he continued, was ridiculous in view of the endorsement at the end of the originating summons saying that they could do so. However, the learned High Court judge said they could only do so on procedure namely that Form H was not in order, was not pasted in the way directed by s. 148 of the Act or as regards the defect in the service of the originating summons. Since there was no such procedural objections, the learned senior assistant registrar should have granted the relevant orders. He had consequently allowed the appeal and had made the orders applied for.

Section 144 of the Act provides for the circumstances when a valuation list may be amended and s. 142 of that Act details the procedures where an aggrieved person may make objections. Section 145 of the Act states:

> 145. (1) Any person who having made an objection in the manner described by section 142 or 144 is dissatisfied with the decision of the local authority thereon may appeal to the High Court by way of originating motion:
>
> Provided that with the filing of the originating motion there shall be paid into the local authority the amount of the rate appealed against.
>
> (2) The originating motion shall be filed by the person dissatisfied with the decision of the local authority within fourteen days of the receipt thereof.

(3) The local authority shall be the respondent in any appeal under this section.

(4) Every such appeal shall be heard before the High Court whose decision on questions of fact shall be final and conclusive.

(5) From the decision of the High Court either party may appeal on questions of law to the Federal Court whose decision shall be final and conclusive.

(6) In any appeal under subsection (5), the provisions of any written law for the time being in force relating to appeals in civil matters from the High Court in its appellate jurisdiction to the Federal Court shall apply.

One of the questions posed in this appeal by this court, which had resulted in the adjournment, is whether an amendment to a valuation list can take place after the expiry of the five-year term of the valuation list in question. Learned counsel for the respondent argued that the valuation list does not expire but it is only superseded by the subsequent valuation list but continue to "remain in force". We find this argument totally devoid of merit as taken in its ordinary sense "to supersede" would mean "to take the place of".

Subsections (2) and (3) of s. 137 of the Act, formerly sub-ss. (3) and (4) as the original sub-s. (2) had been deleted by A 4361 with effect from 3 March 1978, are relevant in this respect and they state as follows:

(2) The Valuation List together with the amendments made under section 144 shall remain in force until it is superseded by a new Valuation List.

(3) A new Valuation List which shall contain the same particulars as in subsection (1) shall be prepared and completed once every five years or within such extended period as the State Authority may determine.

Section 154 of the Act, which the learned High Court judge had referred to, is where an objection is made where the person whose holding is attached disputes the propriety of the attachment and applies to the High Court to stay the proceedtngs. Subsection (2) thereof clarifies that no application shall be entertained unless the amount of the arrears with interest and costs had been deposited by the applicant.

But as the learned High Court judge had stated, this section is not applicable as the appellant are not making any application but is only objecting by way of argument to the respondent's application under s. 151 of the Act for the attachment and sale of the holding.

Learned counsel for the respondent had also submitted that in line with s. 144 of the Act, the valuation list may be amended at any time. It is also not disputed that the valuation list for 1982 to 1986 was published on 22 October 1981 and the valuation list for 1987 to 1991 was published on 23 October 1986. The contention of the respondent was that they could not rate the holding earlier as it was not rateable on 22nd October 1981.

Learned counsel had reiterated that this ground was not raised earlier by the appellant and that the appeal was fatal following the proviso to sub-s. (1) of s. 145 of the Act. In support, he referred to *Semantan Estate (1952) Ltd. v. Collector of Land Revenue* [1960] 26 MLJ 300 where the court held that the condition in the section governing the reference to the court namely s. 22 of the Land Acquisition Enactment (Cap. 140) must be complied with before the collector can make the reference and the court has jurisdiction to act on it, to *Penang Yellow Bus Co. v. Rural District Council* [1961] 27 MLJ 291 where the court ruled that an appeal is not properly before the court by reason of the non-compliance with the provisions of s. 68(3) of the Municipal Ordinance at the time the notice of appeal was lodged, and to *Yee Seng Rubber Co. Sdn. Bhd. v. The Commissioner of the Federal Capital of Kuala Lumpur* [1972] 2 MLJ 21 where the court said that since s. 44(i) of the Town Boards Enactment (Cap. 137) required the rates due to be paid when the notice of appeal was filed, the appeal had to be dismissed as that was a mandatory provision which goes to the jurisdiction of the court, was not directory and cannot be waived.

We, however, felt that this appeal is on a different footing as the appellant is not appealing under sub-s. (1) of s. 145 of the Act but against the High Court order reversing the senior assistant registrar's order refusing to order the attachment and sale under sub-s. (1) of s. 151 of the Act after the respondent had acted under s. 148 of the Act.

We also need to distinguish two of the authorities cited. In the case of *Cathay Finance Co. Ltd. v. Municipal Councillors of Georgetown, Penang* [1957] 3 MC ACJ 105 the court held the amendment to the assessment rates can validly be of retrospective effect. The relevant excerpt of the speech of Rigby, J states:

> Again, I am of the opinion that such amendment can validly be of retrospective effect. As Mr. Meek, for the respondents, pointed out, the whole tenor of the section is to enable the commissioners to counteract the "mistake, oversight or fraud" in the list. It would seem illogical, therefore, if that amendment to vitiate, for example, the fraud could not be made to refer back to the date the fraud was perpetrated.

In the House of Lords case of *Rodwell v. Gwynne Trusts Ltd* [1970] RA 15 it was held that the tenant was not entitled to the protection of the Rent Act 1965 (as re-enacted in the Rent Act 1968) because for such protection to apply there had to be an alteration of the rateable value in the valuation having effect back to the "material date", and as an application for a refund under s. 17 could be made within six years after the rates were paid, a dwelling house long unprotected might suddenly become protected with ensuing complications if it could bring the house within the Act, and such consequences could not have been intended by Parliament.

In the first case, no reference is made to an expired valuation list which is the problem in this appeal. We would add that we agree that there can be retrospective rating provided it affects a current valuation list. In the second case, it was an application by the rate payer himself to alter the valuation list to get protection of the Rent Act 1965 and the facts there are quite different.

Learned counsel for the appellant, quite rightly we might add, referred to sub-s. (2) of s. 137 of the Act which states that the valuation list together with the amendments made under s. 144 of the Act shall remain in force until it is superseded by a new valuation list. He maintained that once superseded, the previous valuation list is no longer in force. Therefore, when a valuation list is amended under sub-s. (1) of s. 144 of the Act, it must certainly be the valuation list that is in force and not a superseded one.

This is reinforced by sub-s. (4) of s. 144 of the Act which says that any amendment made under this section may, at the discretion of the local authority, have regard to the level of annual values or improved value prevailing as at or about the time the current valuation list was prepared. The amendment, therefore, must be to the current valuation list. Also, sub-s. (6) of s. 144 of the Act states that where on account of any amendment in the valuation list the rate payable in respect of any holding is enhanced, reduced or extinguished, the new rate shall be payable, or the rate shall cease to be payable, from the commencement of the next half year or such earlier date as the local authority may determine.

Finally, learned counsel for the appellant referred to the notice dated 1 June 1990 wherein it is stated that the proposal was to amend the valuation list for the years 1986 to 1990. He stressed that there was no such valuation list as the relevant valuation lists were for 1982 to 1986 and for 1987 to 1991. Of course, learned counsel for the respondent promptly said that this had been made clear by the details in the bottom right box in the notice and in para. 7 thereof where the two valuation lists have been stated separately as to the relevant amounts.

Having considered the arguments, authorities and affidavits, we were in total agreement with learned counsel for the appellant that an amendment cannot be made by the respondent to an outdated valuation list. Accordingly, we allowed the appeal as regards the 1982 valuation list with no order as to costs and dismissed the appeal as regards the 1987 valuation list with half costs only. The deposit is to go to the respondent to account of their taxed costs.